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CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

RICHARD CARRILLO-VALENZUELA,

Defendant-Appellant.

No. 05-10504

D.C. No. CR-04-05181-OWW

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Oliver W. Wanger, District Judge, Presiding

Argued and Submitted April 3, 2006
San Francisco, California

BEFORE: NOONAN and BYBEE, Circuit Judges, and SCHWARZER,** Senior
District Judge

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the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

**The Honorable William W Schwarzer, Senior United States District Judge for
the Northern District of California, sitting by designation.

Richard Carrillo-Valenzuela appeals his conviction of eight robberies.

Because the parties are familiar with the facts, we do not restate them.

I.

Since substantial evidence established Carrillo-Valenzuela's identity as the robber, we need not consider the photo array. Witnesses at trial identified him as the person who committed the robberies. One witness observed and spoke with Carrillo-Valenzuela during two separate robberies approximately one month apart. A witness to another robbery testified that Carrillo-Valenzuela came into her store to buy some items and shortly returned to rob the store. Witnesses to Carrillo-Valenzuela's other robberies also had ample opportunity to observe him and identified the distinctive handgun he used in the robberies. Given the totality of the circumstances, the identification of Carrillo-Valenzuela was sufficiently reliable. *United States v. Montgomery*, 150 F.3d 983, 993 (9th Cir. 1998).

II.

The district court did not abuse its discretion in allowing testimony of Carrillo-Valenzuela's use of a false name. Evidence of false names is generally admissible to show consciousness of guilt or intent to evade law enforcement. *United States v. Birges*, 723 F.2d 666, 672 (9th Cir. 1984); *United States v. Guerrero*, 756 F.2d 1342, 1347 (9th Cir. 1984). Carrillo-Valenzuela "does not

indicate how this evidence prejudiced him beyond that ‘which all defendants must suffer when probative evidence is introduced against them.’” *Guerrero*, 756 F.2d at 1347.

III.

Carrillo-Valenzuela’s sentence, imposed in conformity with 18 U.S.C. § 924(c)(1), which calls for consecutive mandatory 25-year sentences, was not unconstitutional under *United States v. Booker*, 543 U.S. 220 (2005), because *Booker* does not apply to mandatory minimum sentences. *United States v. Dare*, 425 F.3d 634, 641 (9th Cir. 2005). Nor did the sentence violate due process. *United States v. Wilkins*, 911 F.2d 337, 339 (9th Cir. 1990) (“Criminal defendants do not have a constitutional right to individualized sentences, and the legislature may set fixed mandatory and determinate sentences for particular offenses.”).

IV.

Finally, Carrillo-Valenzuela’s 2011-month sentence did not violate the Eighth Amendment’s prohibition against cruel and unusual punishment. Because Carrillo-Valenzuela had committed numerous violent offenses and had a criminal record involving the use of weapons, the sentence was not grossly disproportionate to the severity of his crimes. *United States v. Harris*, 154 F.3d 1082, 1084 (9th Cir. 1998) (1141- and 597-month sentences); *see also United States v. Parker*, 241 F.3d

1114, 1116-1118 (9th Cir. 2001) (888- month sentence). Although Carillo-Valenzuela's sentence is longer than those in *Harris* and *Parker*, all of these sentences "are essentially life sentences." *Harris*, 154 F.3d at 1085.

AFFIRMED.